

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USDC Docket Number : 05-11604

Hudson Savings Bank

v.

George C. Austin, III, et al

CLERK'S CERTIFICATE

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

1-20

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 5/26/2006 .

In testimony whereof, I hereunto set my hand and affix the seal of this Court on July 6, 2006.

Sarah A Thornton, Clerk of Court

By:

Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 7-7-06.

Kimberly Bailey
Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:05-cv-11604-GAO**

Hudson Savings Bank v. Austin et al
Assigned to: Judge George A. O'Toole, Jr
Cause: 26:7401 IRS: Tax Liability

Date Filed: 08/01/2005
Jury Demand: None
Nature of Suit: 870 Taxes
Jurisdiction: U.S. Government
Defendant

Plaintiff

Hudson Savings Bank

represented by **Daniel J. Burger**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

George C. Austin, III
*Executor of the Estate of George
Clifford Austin Jr. and as Heir of
George Clifford Austin, Jr.*
also known as
G. Clifford Austin, II

Defendant

United States of America

represented by **Barbara Healy Smith**
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Defendant

**Massachusetts Department of
Revenue**

represented by **Eileen Ryan McAuliffe**
Massachusetts Department of
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/01/2005	<u>1</u>	NOTICE OF REMOVAL by United States of America from Middlesex Superior Court, case number 05-01231-G. \$ 0., filed by United States of America.(Edge, Eugenia) (Entered: 08/02/2005)
08/01/2005		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Collings. (Edge, Eugenia) (Entered: 08/02/2005)
08/01/2005	<u>2</u>	NOTICE of Appearance by Barbara Healy Smith, Lydia Bottome Turanchik on behalf of United States of America. (Edge, Eugenia) (Entered: 08/02/2005)
08/01/2005	<u>3</u>	Request for Enlarge of Time to September 28, 2005 to File Response/Reply as to <u>1</u> Notice of Removal by United States of America. (Edge, Eugenia) (Entered: 08/02/2005)
08/09/2005	<u>4</u>	MOTION to Dismiss by Massachusetts Department of Revenue.(McAuliffe, Eileen) Additional attachment(s) added on 8/10/2005 (Edge, Eugenia). (Entered: 08/09/2005)
08/09/2005	<u>5</u>	MEMORANDUM in Support re <u>4</u> MOTION to Dismiss filed by Massachusetts Department of Revenue. (Edge, Eugenia) (Entered: 08/10/2005)
08/09/2005	<u>6</u>	CERTIFICATE OF CONSULTATION re <u>4</u> MOTION to Dismiss by Eileen Ryan McAuliffe on behalf of Massachusetts Department of Revenue. (Edge, Eugenia) (Entered: 08/10/2005)
08/16/2005	<u>7</u>	STATE COURT Record. (Attachments: # <u>1</u> State docket sheet)(Edge, Eugenia) (Entered: 08/18/2005)
08/19/2005	<u>8</u>	<i>Request for Extension of Time to Respond to Respond to the Commonwealth's Motion to Dismiss - Letter/request (non-motion).</i> (Bottome Turanchik, Lydia) (Entered: 08/19/2005)
10/12/2005	<u>9</u>	NOTICE of Scheduling Conference Scheduling Conference set for 11/16/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly.

		(Lyness, Paul) (Entered: 10/12/2005)
10/12/2005	<u>10</u>	Assented to MOTION to Continue Scheduling Conference by United States of America.(Turanchik, Lydia) (Entered: 10/12/2005)
10/14/2005	•	Judge George A. O'Toole Jr.: ElectronicORDER entered granting <u>10</u> Motion to Continue (Lyness, Paul) (Entered: 10/14/2005)
10/14/2005	•	NOTICE OF RESCHEDULING Scheduling Conference set for 11/28/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 10/14/2005)
10/26/2005	•	NOTICE OF RESCHEDULING Scheduling Conference set for 12/13/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 10/26/2005)
12/07/2005	<u>11</u>	JOINT SUBMISSION pursuant to Local Rule 16.1 by United States of America.(Turanchik, Lydia) (Entered: 12/07/2005)
12/12/2005	•	Notice Resetting or Cancelling Hearing. Hearing rescheduled or cancelled: The scheduling conference for 12/13/05 is cancelled (Lyness, Paul) (Entered: 12/12/2005)
12/22/2005	<u>12</u>	Opposition re <u>4</u> MOTION to Dismiss filed by United States of America. (Turanchik, Lydia) Additional attachment(s) added on 1/4/2006 (Edge, Eugenia). (Entered: 12/22/2005)
01/03/2006	<u>13</u>	MOTION for Leave to File by Massachusetts Department of Revenue.(McAuliffe, Eileen) (Entered: 01/03/2006)
01/04/2006	<u>14</u>	NOTICE by United States of America re <u>13</u> MOTION for Leave to File (Turanchik, Lydia) (Entered: 01/04/2006)
01/13/2006	•	Judge George A. O'Toole Jr.: Electronic ORDER entered granting Nunc Pro Tunc <u>3</u> Motion for Extension of Time to File Response/Reply re <u>3</u> MOTION for Extension of Time to September 28, 2005 to File Response/Reply as to <u>1</u> Notice of Removal Responses due by 9/28/2005 (Lyness, Paul) (Entered: 01/13/2006)
01/18/2006	<u>15</u>	REPLY to Response to Motion re <u>13</u> MOTION for Leave to File filed by Massachusetts Department of Revenue. (McAuliffe, Eileen) (Entered: 01/18/2006)

01/20/2006	16	NOTICE of filing attachments by Massachusetts Department of Revenue re <u>15</u> Reply to Response to Motion. c/s (Attachments: # <u>1</u> Copy of Joint Motion for Release of Funds filed in Superior Court# <u>2</u> Attached Court of Appeals Judgement dtd 12/8/05# <u>3</u> Copy of Memo of Decision and Order dtd 7/3/89)(Edge, Eugenia) (Entered: 01/20/2006)
01/26/2006		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>13</u> Motion for Leave to File (Lyness, Paul) (Entered: 01/26/2006)
03/29/2006	17	Judge George A. O'Toole Jr.: MEMORANDUM AND ORDER entered granting <u>4</u> Motion to Dismiss. Therefore, I conclude that the Commonwealth must be dismissed as a result of its proper invocation of its Eleventh Amend ment immunity and that, the Commonwealth being an indispensable party, the entire action must be dismissed. Accordingly, the Commonwealth's Motion to Dismiss Entire Case, Docket # 4, is GRANTED and the case is DISMISSED in its entirety. (Lyness, Paul) Additional attachment(s) added on 3/30/2006 (Lyness, Paul). (Entered: 03/30/2006)
03/30/2006		Notice of correction to docket made by Court staff. Correction: The Memorandum and Order corrected because: Wrong document attached (Lyness, Paul) (Entered: 03/30/2006)
03/30/2006	18	Judge George A. O'Toole Jr.: ORDER entered. JUDGMENT in favor of Defendants against Plaintiff(Lyness, Paul) (Entered: 03/30/2006)
05/26/2006	19	NOTICE of Appearance by Gerald C. Miller on behalf of United States of America (Miller, Gerald) (Entered: 05/26/2006)
05/26/2006	20	NOTICE OF APPEAL as to <u>17</u> Order on Motion to Dismiss,, by United States of America. \$ 455 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 6/15/2006. (Miller, Gerald) (Entered: 05/26/2006)
05/26/2006		Notice of correction to docket made by Court staff. Attorney Gerald Miller's record in this case was modified to allow electronic noticing. (Hurley, Virginia) (Entered: 05/26/2006)